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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL J. CONLON,

Plaintiff,

v.

UNITED STATES OF AMERICA;
UNITED STATES DEPARTMENT OF
JUSTICE;
JOHN ASHCROFT, Attorney General;
FEDERAL BUREAU OF PRISONS;
NANCY BAILEY, Warden of FGI,
Safford, Arizona;
UNITED STATES PAROLE COMMISSION;
JOHN R. SIMPSON; U.S. Parole
Commissioner;
UNITED STATES PROBATION OFFICE;
KEVIN LOWRY, U.S. Probation
Officer;
PATRICK FOY, U.S. Probation
Officer;
THOMAS COLLINS, U.S. Probation
Officer;
JOHN LAWHEAD, U.S. Probation
Officer;
UNITED STATES SENTENCING
COMMISSION;

Defendants.

CV-N-01-700-DWH-VPC

UNITED STATES' ANSWER
TO SECOND AMENDED COMPLAINT

Comes now the United States of America, through its
undersigned counsel, and answers the second amended complaint as
follows:

54

I. PARTIES

1. Lacks sufficient information to form a belief as to the truth or falsity of the allegations of paragraph one and, on that basis, denies the allegations of paragraph one.

2. Admits the allegations of paragraph two.

3. Admits the allegations of paragraph three.

4. Admits the allegations of paragraph four.

5. Admits the allegations of paragraph five.

6. Admits the allegations of paragraph six.

7. Admits that, prior to his retirement, John Lawhead was a probation officer.

8. Admits that, prior to her retirement, Nancy Bailey was a warden of the Safford, Arizona BOP facility.

9. Admits the allegations of paragraph nine.

10. Lacks sufficient information to form a belief as to the truth or falsity of the allegations of paragraph ten and, on that basis, denies the allegations of paragraph ten.

11. Denies the allegations of paragraph eleven.

II. JURISDICTION¹

9. Denies that this Court has subject matter jurisdiction over this action.

III. FACTS COMMON TO ALL CLAIMS

10. Admits the allegations of paragraph ten.

¹ The numbering of the paragraphs in the second amended complaint begins again with paragraph 9 after paragraph numbered 11. To avoid any confusion, the United States will follow the numbering used by the plaintiff.

11. Admits the allegations of paragraph eleven.

12. Admits the allegations of paragraph twelve.

13. Admits the allegations of paragraph thirteen.

14. Admits the allegations of paragraph fourteen.

15. Denies the allegations of paragraph fifteen.

16. Admits the allegations of paragraph sixteen.

17. Admits the allegations of paragraph seventeen.

18. Admits the allegations of paragraph eighteen.

19. Admits the allegations of paragraph nineteen.

20. Admits the allegations of paragraph twenty.

21. Denies the allegations of paragraph twenty-one.

22. Lacks sufficient information to form a belief as to the truth or falsity of the allegations of paragraph twenty-two and, on that basis, denies the allegations of paragraph twenty-two.

23. Lacks sufficient information to form a belief as to the truth or falsity of the allegations of paragraph twenty-three and, on that basis, denies the allegations of paragraph twenty-three.

24. Lacks sufficient information to form a belief as to the truth or falsity of the allegations of paragraph twenty-four and, on that basis, denies the allegations of paragraph twenty-four.

25. Admits that the hearing examiner was Jeff Kostbar. Lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations of paragraph twenty-five and, on that basis, denies the remaining allegations of paragraph twenty-five.

26. Admits the allegations of paragraph twenty-six.

1 27. Admits the allegations of paragraph twenty-seven.

2 28. Denies the allegations of paragraph twenty-eight.

3 29. Admits the allegations of paragraph twenty-nine.

4 30. Admits that, on October 15, 1998, the Parole
5 Commission's National Appeals Board informed plaintiff that the
6 Commission's previous decisions were affirmed. Denies the
7 remaining allegations of paragraph thirty.

8 31. Admits the allegations of thirty-one.

9 32. Admits the allegations of thirty-two.

10 33. Admits the allegations of thirty-three.

11 34. Admits the allegations of thirty-four.

12 35. Admits the allegations of thirty-five.

13 36. Admits the allegations of thirty-six.

14 37. Admits the allegations of thirty-seven.

15 38. Admits the allegations of thirty-eight.

16 39. Admits the allegations of thirty-nine.

17 40. Admits the allegations of forty.

18 41. Admits the allegations of forty-one.

19 42. Denies the allegations of paragraph forty-two.

20 43. Admits the allegations of forty-three.

21 44. Lacks sufficient information to form a belief as to the
22 truth or falsity of the allegations of paragraph forty-four and,
23 on that basis, denies the allegations of paragraph forty-four.

24 45. Admits the allegations of forty-five.

25 46. Admits the allegations of forty-six.

26 47. Admits the allegations of forty-seven.

27 48. Admits the allegations of forty-eight.

1 49. Admits the allegations of forty-nine.

2 50. Admits the allegations of fifty.

3 51. Lacks sufficient information to form a belief as to the
4 truth or falsity of the allegations of paragraph fifty-one and,
5 on that basis, denies the allegations of paragraph fifty-one.

6 52. Admits the allegations of fifty-two.

7 53. Admits the allegations of fifty-three.

8 54. Denies the allegations of paragraph fifty-four.

9 55. Refers to and incorporates herein the responses to the
10 allegations in paragraphs 1-54.

11 56. Denies the allegations of paragraph fifty-six.

12 57. Denies the allegations of paragraph fifty-seven.

13 58. Denies the allegations of paragraph fifty-eight.

14 59. Admits the allegations of paragraph fifty-nine.

15 60. Admits that plaintiff made certain arguments concerning
16 the Commission's jurisdiction. Denies the remaining allegations
17 of paragraph sixty.

18 61. Denies the allegations of paragraph sixty-one.

19 62. Denies the allegations of paragraph sixty-two.

20 63. Admits that plaintiff was assessed 24 months in prison.
21 Denies the remaining allegations of paragraph sixty-three.

22 64. Denies the allegations of paragraph sixty-four.

23 65. Denies the allegations of paragraph sixty-five.

24 66. Denies the allegations of paragraph sixty-six.

25 67. Denies the allegations of paragraph sixty-seven.

26 68. Refers to and incorporates herein the responses to the
27 allegations in paragraphs 1-67.

1 69. Denies the allegations of paragraph sixty-nine.

2 70. Denies the allegations of paragraph seventy.

3 71. Denies the allegations of paragraph seventy-one.

4 72. Denies the allegations of paragraph seventy-two.

5 73. Denies the allegations of paragraph seventy-three.

6 74. Refers to and incorporates herein the responses to the
7 allegations in paragraphs 1-73.

8 75. Denies the allegations of paragraph seventy-five.

9 76. Denies the allegations of paragraph seventy-six.

10 77. Denies the allegations of paragraph seventy-seven.

11 78. Refers to and incorporates herein the responses to the
12 allegations in paragraphs 1-77.

13 79. Denies the allegations of paragraph seventy-nine.

14 80. Denies the allegations of paragraph eighty.

15 81. Denies the allegations of paragraph eighty-one.

16 82. Denies the allegations of paragraph eighty-two.

17 83. Denies the allegations of paragraph eighty-three.

18 84. Denies the allegations of paragraph eighty-four.

19 85. Refers to and incorporates herein the responses to the
20 allegations in paragraphs 1-84.

21 86. Denies the allegations of paragraph eighty-six.

22 87. Denies the allegations of paragraph eighty-seven.

23 88. Denies the allegations of paragraph eighty-eight.

24 89. Denies the allegations of paragraph eighty-nine.

25 90. Denies the allegations of paragraph ninety.

26 91. Denies the allegations of paragraph ninety-one.

27 92. Denies the allegations of paragraph ninety-two.

1 93. Denies the allegations of paragraph ninety-three.

2 94. Refers to and incorporates herein the responses to the
3 allegations in paragraphs 1-93.

4 95. Denies the allegations of paragraph ninety-five.

5 96. Denies the allegations of paragraph ninety-six.

6 97. Denies the allegations of paragraph ninety-seven.

7 98. Denies the allegations of paragraph ninety-eight.

8 99. The United States denies all allegations not otherwise
9 admitted in the above-numbered paragraphs.

10 AS A FIRST AFFIRMATIVE DEFENSE, the United States avers that
11 the second amended complaint fails to state a claim upon which
12 relief may be granted.

13 AS A SECOND AFFIRMATIVE DEFENSE, the United States avers
14 that this Court lacks subject matter jurisdiction over the
15 allegations of the second amended complaint.

16 AS A THIRD AFFIRMATIVE DEFENSE, the United States avers that
17 the plaintiff has failed to exhaust his administrative remedies
18 under the Federal Tort Claims Act.

19 AS A FOURTH AFFIRMATIVE DEFENSE, the United States avers
20 that this action is barred by the applicable statute of
21 limitations.

22 AS A FIFTH AFFIRMATIVE DEFENSE, the United States avers that
23 plaintiff failed to present a timely administrative claim as
24 required under the Federal Tort Claims Act.

25 AS A SIXTH AFFIRMATIVE DEFENSE, the United States avers that
26 plaintiff was himself negligent with respect to the events
27
28

1 described in the second amended complaint and such contributory
2 negligence bars any recovery.

3 AS A SEVENTH AFFIRMATIVE DEFENSE, the United States avers
4 that it is immunized from liability by the terms of 28 U.S.C.,
5 section 2680(a).

6 AS AN EIGHTH AFFIRMATIVE DEFENSE, the United States avers
7 that it is immunized from liability by the terms of 28 U.S.C.,
8 section 2680(h).

9 WHEREFORE, the United States prays for judgment as follows:

- 10 1. That this action be dismissed with prejudice,
11 2. That plaintiff take nothing,
12 3. For costs of defending this action,
13 4. For such other and further relief as may be proper.

14 Respectfully submitted,

15 DANIEL G. BOGDEN
16 United States Attorney

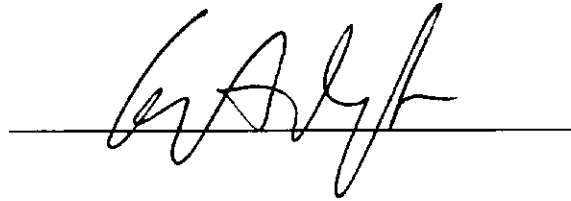
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18 _____

19 GREG ADDINGTON
20 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing UNITED STATES' ANSWER
TO SECOND AMENDED COMPLAINT was mailed by first-class mail,
postage pre-paid, on May 9, 2003

Wm. Patterson Cashill
410 California Avenue
Reno, NV 89509

A handwritten signature, appearing to be "Gary", is written over a horizontal line.